# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

TYRECIA M. OSBORNE Claimant	}
VS.	}
MCI BUSINESS SERVICES Respondent	) Docket No. 189,057
AND	<b>\}</b>
CONTINENTAL INS. CO. Insurance Carrier	Ś

# ORDER

Claimant appeals the Award of Administrative Law Judge John D. Clark dated May 8, 1998. Oral argument was heard December 11, 1998, in Wichita, Kansas.

### **A**PPEARANCES

Claimant appeared by her attorney, John L. Carmichael of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Stephen J. Jones of Wichita, Kansas. There were no other appearances.

## RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of Administrative Law Judge John D. Clark are herein adopted by the Appeals Board.

#### ISSUES

What is the nature and extent of claimant's injury and/or disability?

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative

Law Judge are accurate and appropriate, and the Appeals Board adopts same as its own findings and conclusions as if specifically set forth herein.

While the Appeals Board finds that claimant's neck injury did arise out of and in the course of her employment, the medical evidence is sufficiently persuasive to convince the Appeals Board that claimant's upper extremities symptoms, including the bilateral carpal tunnel syndrome, do not relate to her work-related injury or to the neck injury suffered while claimant was being treated by Dr. Watson.

The lack of a connection between the carpal tunnel condition and claimant's cervical problems is supported by the medical opinions of several doctors in the record. Dr. Jacob Amrani did not believe that the impingement was related to the fall, especially when considering the delay in the occurrence of the carpal tunnel symptoms. He felt that it would be more likely that the carpal tunnel syndrome was related to the diabetes. While Dr. Robert L. Eyster did not make an absolute correlation between the diabetes and the carpal tunnel syndrome, he did acknowledge that he would not argue with Dr. Amrani regarding the fact that people with diabetes were more prone to develop carpal tunnel syndrome. Finally, Dr. J. Mark Melhorn, who performed carpal tunnel surgery on claimant, ultimately opined that claimant's carpal tunnel syndrome resulted from preexisting factors, including claimant's age, gender, and the genetic component of claimant's diabetes. He saw these individual risk factors as being a more probable cause than the traumatic event associated with the fall and the neck manipulation.

The Appeals Board is not deciding the question of whether the carpal tunnel syndrome is or is not related to claimant's work activities or any other work-related accident not in dispute. The Appeals Board does find, however, that the carpal tunnel syndrome was not caused by the December 3, 1993, accident and/or later manipulation treatment received for that accidental injury.

The Appeals Board also finds claimant's limited attempts at seeking employment did not constitute a good faith effort on claimant's part. Copeland v. Johnson Group, Inc., 24 Kan. App. 2d 306, 944 P.2d 179 (1997). In addition, the jobs offered by respondent were within claimant's restrictions, and at a comparable wage. Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan 1091 (1995). Finally, the Appeals Board finds claimant had the ability to earn a comparable wage but made no attempt to do so. These factors eliminate claimant's entitlement to a work disability.

Wherefore, the Appeals Board finds that the award by the Administrative Law Judge of a 6 percent permanent partial impairment to the body as a whole on a functional basis is appropriate and is adopted by the Appeals Board as its own.

#### AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated May 8, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.	
Dated this day of A	pril 1999.
	BOARD MEMBER
	BOARD MEMBER
	BOARD MEMBER

c: John L. Carmichael, Wichita, KS Stephen J. Jones, Wichita, KS John D. Clark, Administrative Law Judge Philip S. Harness, Director